D.B.C.Special Appeal (Writ) No. 642/06
(Om Shiv Shakti Associates vs. State of Rajasthan & Ors.)

Date of Order :- 13th October, 2006.

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE JUSTICE SHRI MOHAMMAD RAFIQ

Mr.B.M.Bohra, for the appellant.

This special appeal is directed against the order of the learned Single Judge dated 29.8.2006 in S.B.Civil Writ Petition No.2342/05 vacating stay. The Court had earlier granted stay of the order dated 10.3.2005 on 21.4.2005. In terms of the order impugned in the writ petition dated 10.3.2005 the appellant was held liable to pay the sum of Rs.7,55,370/- as the amount of royalty recovered by the applicant.

It is not necessary to notice the facts of the case, for, after some arguments, counsel for the appellant fairly stated in response to the observations of this Court that the appellant may be allowed to prefer appeal against the impugned order before the Director of Mines under Rule

43 of the Rajasthan Minor Mineral Concession Rules, 1986. Counsel however submitted that a limited protection may be allowed to the appellant by staying the recovery of the impugned demand for a week so that the appellant may prefer appeal before the Director in the meantime and apply for interim relief.

This Court ordinarily does not grant interim relief where the main petition is not entertained and the party is relegated to the alternative remedy, but considering that order of the stay was passed by this Court on 21.4.2005 which remained operative for over a year until it came to be vacated by the order impugned in this appeal on 29.8.2006, we are of the view that it would be in the interest of justice if recovery of the impugned demand pursuant to which impugned order dated 10.3.2005 is stayed till 20th October, 2006. We order accordingly.

Counsel for the appellant stated that in view of the above order, the writ petition has become infructuous and he may be allowed to withdraw the same .

Accordingly, the writ petition is dismissed as withdrawn and this appeal is disposed of in the above term.

A copy of this order may be placed in the record of S.B.Civil Writ Petition No. 2342/05.

(MOHAMMAD RAFIQ),J. **(S.N.JHA),C.J.**

Aditya/-